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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Order: 15.11.2018*

+ **CM(M) 1313/2018**

HALDIRAM BHUJIAWALA LTD Petitioner

Through: Mr. Saurav Agarwal, Mr. Akhil Sachar,
Mr. Kapil Rastogi, Ms. Aakriti Dawar &
Mr. Vibhu Anshuman, Advocates

versus

M/S HALDIRAM INDIA PVT LTD & ORS Respondents

Through: Mr. Sanjiv Sindhvani, Sr. Advocate
along with Mr. Neeraj Grover,
Mr. Naveen Grover and Mr. Gurinder
Singh, Advocates.

+ **CM(M) 1383/2018**

HALDIRAM BHUJIAWALA LTD Petitioner

Through: Mr. Saurav Agarwal, Mr. Akhil Sacher
and Mr. Kapil Rustagi, Advocates

versus

M/S HALDIRAM INDIA PVT LTD & ORS ... Respondents

Through: Mr. Sanjiv Sindhvani, Sr. Advocate
along with Mr. Neeraj Grover,
Mr. Naveen Grover and Mr. Anmol
Chadha, Advs.

CORAM:

HON'BLE MR. JUSTICE VINOD GOEL

CM No.47391/2018 (exemption) in CM(M) 1383/2018

1. Allowed, subject to all just exceptions.

2. The application is disposed of.

CM(M) 1313/2018, CM No.45118/2018 (stay)

CM(M) 1383/2018, CM No.47390/2018 (stay)

3. The impugned orders dated 24.09.2018, 03.10.2018, 04.10.2018 and 22.10.2018 passed by the Court of Shri Neeraj Gaur, Additional District Judge-01, North District, Rohini, Delhi ('ADJ') in Civil Suit bearing No. TM 13/18 are the subject matter of challenge in this petition filed under Article 227 of the Constitution of India being CM (M) 1313/2018.

4. The subsequent order dated 02.11.2018 passed by the said Court of learned 'ADJ' is further the subject matter of challenge in the petition filed under Article 227 of the Constitution of India being CM (M) 1383/2018.

5. On 25.10.2016, the respondent/plaintiff filed a Civil Suit No. 708/2016 (new No. TM 13/18) before the learned District Sessions Judge, Rohini Courts, North Delhi, inter alia, seeking a decree of permanent injunction restraining the petitioner/defendant No. 1 from using outside the State of West Bengal, the trade mark "Haldiram's" with or without any prefix or suffix including "Prabhuji" and/or from indicating the origin of their goods "from the house of the Haldiram's" or using the mark "Haldiram" and for delivery up of all the infringing materials bearing the impugned marks and for an order of rendition of accounts directing the petitioners to render their truthful accounts for the purpose of ascertaining the profits earned by them.

6. It is submitted by both the learned counsel for the parties that no ex-parte temporary injunction was granted to the respondent No. 1.

7. Prior to commencement of the arguments on the interim application under Order XXXIX Rules 1 and 2 of CPC, on 07.08.2018, an application was filed by the petitioner/defendant No. 1 under Section 151 CPC directing the respondent/plaintiff not to place reliance on the order dated 15.01.2016 passed by this Court in Contempt Petition No. M-62/11 (CCP 55/2000) till the order dated 13.03.2018 in FAO 40/2016 is in operation and also direct the respondent/plaintiff not to place reliance on the orders dated 10.12.1991 in Suit No. 635/1992, 12.05.1999 in Suit No. 635/1992 (TM 2/11) and 27.09.2012 in Suit No. 188/2003 (Old No. 635/1992 and new No. TM 2/11) till the order dated 13.03.2018 in FAO 40/2016 passed by this Court is in operation.

8. The petitioner/respondent No. 1 filed another application under Section 151 CPC on the same day, praying for a direction that the application under Section 151 CPC may be heard and decided prior to the adjudication of the application under Order XXXIX Rules 1 and 2 of the CPC filed by the respondent/plaintiff so as to ensure an effective compliance of the order dated 13.03.2018 passed by this Court in FAO 40/2016.

9. Arguments were heard at length by the learned 'ADJ' on 24.09.2018, 03.10.2018 and 04.10.2018 on the interim application of the respondent/plaintiff under Order XXXIX Rules 1 and 2 CPC.

10. The arguments by the learned counsel for the petitioner/defendants were addressed on 22.10.2018 in the post-lunch session and the matter was adjourned to 29.10.2018 with the direction to the parties to file written submissions and pinpointed submissions.

11. The learned counsel for the petitioner contends that applications filed by them under Section 151 CPC have so far not been disposed of and the learned ADJ is bent upon to dispose of the application of the respondent/plaintiff under Order XXXIX Rules 1 and 2 CPC prior to deciding their applications which would frustrate the order dated 13.03.2018 passed by this Court in FAO 40/2016.

12. On 02.11.2018, the learned counsel for the respondent/plaintiff submitted before Ld. ADJ that *“his statement may be recorded to the effect that the contempt order has neither been pressed nor been relied by the plaintiff in support of his arguments on the interim application. His statement has been recorded separately.”*

13. The learned ‘ADJ’ declined the request of the learned counsel for the petitioner by impugned order dated 02.11.2018 by observing *‘Record has revealed that the application dated 07-8-18 was moved prior to commencement of arguments on the interim application. The prayer in the said application were not to consider certain orders passed in the previous litigations between the parties. I have always been of the view that the application, without hearing the arguments, was preemptive in nature. Therefore, I had refrained from passing order thereon because before hearing arguments, I could not have preempted as to what were going to be the contours of my consideration while deciding the interim application.....’*

14. The learned ADJ is required to dispose of the application of the respondent/plaintiff under Order XXXIX Rules 1 and 2 CPC in accordance with law after hearing the permissible legal & factual submissions of both the

parties. Applications filed by the petitioners/defendants on 07.08.2018 were premature and filed merely on apprehensions, whims and fancies. Certainly no separate orders to dispose of the applications dated 07.08.2018 filed under Section 151 CPC are required to be passed by the learned 'ADJ' which would be considered and disposed of while deciding the application under Order XXXIX Rules 1 and 2 of CPC.

15. In view of the discussion, both the petitions being CM (M) 1313/2018 and CM (M) 1383/2018 are hereby dismissed along with pending applications with no order as to costs.

VINOD GOEL, J.

NOVEMBER 15, 2018
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